IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3764 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANISHKUMAR B KANUGA

Versus

STATE OF GUDJARAT

Appearance:

MR AD SHAH for Petitioners

MR ST MEHTA APP for Respondents

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 01/09/2000

ORAL JUDGEMENT

This is an application under Sec. 482 of the Code of Criminal Procedure, 1973, filed by original accused nos. 2 to 4 of Criminal Case No. 2 of 1993 pending on the file of the learned Judge of the Special

Court, constituted under the Essential Commodities Act, 1955 with a request to quash the proceedings initiated against them.

2. The petitioners are the original accused nos. 2 to 4, while respondent no.1 is the State of Gujarat i.e. Prosecution and respondent no. 2 is the original complainant, and therefore, the parties will be referred to hereinafter as the Complainant, Prosecution and respective accused at appropriate places.

3. The facts leading to this present Misc. Criminal Application, in a nutshell, are as follows:

The petitioners, who are accused nos. 2 to 4, are the partners of one partnership firm named M/s. Natwerlal Chunilal Sons & Company which is an accused no.1 in aforesaid Criminal Case No. 2 of 1993, pending on the file of the learned Judge of the Special Court (who will be referred to hereafter as the learned Judge of the trial court), constituted under the Essential Commodities Act, 1955. One Bipinchandra Uttamram Dahejwala is also one of the partners of said partnership firm and that partner Bipinchandra Uttamchand Dahejwala is an accused no.5 in aforesaid criminal case.

Respondent no.2, who is original complainant of said criminal case, is serving as a Deputy Mamlatdar (Civil Supplies) at Bharuch. The accused no.1 -partnership firm is carrying on business of running a Petrol & Diesel Pumps at Bharuch and for that accused no.1 is having a due licence, since 1981.

On or about 2nd February, 1991, the complainant had carried out a surprise checking at about 2-00 p.m. under the instructions of the District Civil Supplies Officer of Bharuch. At that time of surprise checking, accused no.5 Bipinchandra Uttamram Dahejwala was present at the said Petrol Pump and in his presence, samples of petrol and diesel were collected in different bottles in presence of Panch Witnesses and price for the same was paid to the accused. As per the case of the complainant, thereafter by following the necessary procedure for taking samples and sealing the bottles of samples of diesel and Petrol, said bottles were sent to Forensic Science Laboratory, and on analysing the same, it was found that samples were adulterated, and that the said petrol did not conform to the standard issued by the Government. It is the case of the prosecution that accused sold inferior quality of petrol to its customers, and thus they are dishonestly cheating public and thereby

contravened the provisions of the Gujarat Essential Commodities (Licensing Control & Stock Declaration) Order, 1981 and contravention of that provisions are punishable under Sec.7 of the Essential Commodities Act, 1955 (in short the "Act").

4. Thereafter, the complainant lodged the complaint against the accused nos. 1 to 5 and present petitioners are cited as accused in the Court of learned Judge of the trial Court. After filing of that complaint, that complaint came to be registered as Criminal Case No. 2 of 1993. Thereafter the accused no.3 through his advocate submitted an application dt. 12/7/1993 with a request to the Court to discharge him from the case and to proceed the case further against other rest of the accused. That application was heard at length by the learned Judge of the trial Court and after hearing the learned advocates for both the parties, that application submitted by accused no.3 was dismissed on 21-06-1994 on the ground that it was a premature application. The learned Judge of the trial Court also gave direction that the learned advocate for the rest of the accused was at liberty to appear for and on behalf of accused no.3 and apply for exemption with separate application.

5. Being aggrieved against and dissatisfied with the said order, the present petitioners who are cited as accused nos. 2 to 4 have submitted this present Misc. Criminal Application with a request to quash the proceedings against them on the ground that in view of Sec.10(1) of the Act, they were not in charge of and responsible to the Company for conducting affairs of the business of the Company, when visit was made by the complainant.

6. I have heard Shri A.D.Shah, the learned Senior Advocate for the petitioners and Shri S.T.Mehta, learned APP for the respondents in detail at length.

7. During the course of arguments, it was jointly submitted by the learned advocates for both the parties that reasons may not be assigned when final order is passed in this matter.

8. Having heard the learned advocates for both the parties and after going through the grounds for quashing the complaint qua accused nos.2 to 4 and after perusing the impugned order dt. 21/6/1994 of the learned Judge of the trial Court, this court deems fit, just, proper and justifiable to quash the proceedings of Special Case No.2 of 1993 pending on the file of the Court of learned

Special Judge, Bharuch against the present petitioners namely accused no.2 -Manishkumar Bhupendrabhai Kanunga, accused no.3 Chitranjanbhai Natverlal and accused No.4 Kusvadan Natvarlal. This order is passed subject to liberty given to the prosecution to lead evidence in case qua accused no.1 and accused no.5 on the point that accused nos. 2 to 4 were in charge of and were responsible to the partnership firm accused no.1, for conducting business of the accused no.1 at the relevant point of time after framing of the charge against accused nos. 1 and 5, if they so desire. The learned Judge of the trial court is directed to consider the evidence, if led by the prosecution as per aforesaid liberty, given by this court in its proper perspective and if he finds that case is made out under Sec.10(1) of the Act against any of accused nos. 2 to 4 or all, then he may proceed further in the case under Sec.10(1) of the Act read with Sec.319 of Cr.P.Code, but that too after affording full opportunity of being heard to all concerned perties. It is also made clear that accused nos. 2 to 4 will not take any plea under Sec.300 Cr.P.Code at that time when a request is made by prosecution to implead accused nos. 2 to 4 as accused in the case under Sec.319 of Cr.P.Code at appropriate stage.

9. The learned Judge of the trial Court is directed to take into consider the legal position which is made clear in Paras 17 and 18 of the case of MUNICIPAL CORPORATION OF DELHI Vs. RAM KISHAN ROHTAGI AND OTHERS, reported in AIR 1983 SC 67, in case if an eventuality occurs to consider the request of the prosecution to implead accused nos. 2 to 4 after leading evidence to satisfy requirements of Sec.10(1) of the Act.

10. In view of what is stated hereinabove, this Misc. Criminal Application No. 3764 of 1994 is allowed and proceeding initiated against accused nos. 2 to 4 in Special Criminal Case No.2 of 1993 which is pending before the learned Judge of the Special Court constituted under the Act, is quashed and set aside. Rule is made absolute accordingly. Stay granted by this court on 11th August, 1994 is vacated so far as case qua accused nos. 1 and 5 only, is concerned.

As Special Case No.2 of 1993 is seven years old, the learned Judge of the trial Court is directed to expedite the trial of case against accused nos. 1 and 5 at the earliest by giving top priority of other cases filed subsequent to it and dispose it of as expeditiously as possible, preferably within six months from the date of receipt of writ of this court.

Date: 1/9/2000. (H.H.MEHTA,J.)
ccshah